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COMMITTEE OF THE WHOLE

SUMMARY RECORD OF THE 39th MEETING

Held at the Headquarters of the Food and Agriculture Organization of the United Nations on Wednesday, 15 July 1998, at 6 p.m.

Chairman: Mr. P. KIRSCH (Canada)
later: Ms. FERNANDEZ de GURMENDI (Argentina) (Vice-Chairman)
later: Mr. P. KIRSCH (Canada) (Chairman)

CONTENTS

Agenda item		*Paragraphs*
11	Consideration of the question concerning the finalization and adoption of a convention on the establishment of an international criminal court in accordance with General Assembly resolutions 51/207 of 17 December 1996 and 52/160 of 15 December 1997 (*continued*)	1-37

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The meeting was called to order at 6.25 p.m.

CONSIDERATION OF THE QUESTION CONCERNING THE FINALIZATION AND ADOPTION OF A CONVENTION ON THE ESTABLISHMENT OF AN INTERNATIONAL CRIMINAL COURT IN ACCORDANCE WITH GENERAL ASSEMBLY RESOLUTIONS 51/207 OF 17 DECEMBER 1996 AND 52/160 OF 15 DECEMBER 1997 (*continued*) (A/CONF.183/2/Add.1 and Corr.1; A/CONF.183/C.1/L.64, L.65/Rev.1, L.66 and L.67/Rev.1)

Report of the Drafting Committee (*continued*)

1. **Mr. BASSIOUNI** (Egypt), Chairman of the Drafting Committee, introduced the first part of the Committee's report, in document A/CONF.183/C.1/L.64, containing its proposed text for Part 1 of the draft Statute.

2. *The Drafting Committee's text for Part 1 of the draft Statute was adopted.*

3. **Mr. BASSIOUNI** (Egypt), Chairman of the Drafting Committee, introduced document A/CONF.183/C.1/L.65/Rev.1 on Part 3 of the draft Statute. The title, "General principles of criminal law", did not mean that the intention was to set forth all the general principles of criminal law; Part 3 would merely state the general principles of criminal law contained in the Statute.

4. Article 22 was being called "Non-retroactivity *ratione personae*", to differentiate the concept from that of jurisdiction *ratione temporis*, which was covered in article 8.

5. **Mr. YAÑEZ-BARNUEVO** (Spain) wondered whether the word "principles" in the title should not be replaced by "provisions".

6. **Mr. SALAND** (Sweden) thought that it might be preferable to retain the existing title for Part 3, rather than change the title at the present stage.

7. **Mr. HAMDAN** (Lebanon) said that article 22 raised issues that his delegation considered should be discussed in connection with article 8, in Part 2 of the draft Statute.

8. After a discussion in which **Mr. PATEL** (Zimbabwe), **Mr. GÜNEY** (Turkey) and **Mr. AL ANSARI** (Kuwait) took part, **Mr. TOMKA** (Slovakia), supported by **Mr. YAÑEZ-BARNUEVO** (Spain) and **Mr. GÜNEY** (Turkey), proposed that the Committee should adopt the report of the Drafting Committee on Part 3 on the understanding that action on article 22 would be postponed until article 8 was considered.

9. *It was so decided.*

10. **Mr. BASSIOUNI** (Egypt), Chairman of the Drafting Committee, introduced document A/CONF.183/C.1/L.67/Rev.1 on Part 4 of the draft Statute.

11. **Mr. KROKHMAL** (Ukraine) said that his delegation had reservations regarding article 37, paragraph 8. The question of geographical representation had not yet been satisfactorily resolved.

12. **Mr. HAMDAN** (Lebanon) said that his delegation had reservations on article 43, paragraph 2. Lebanon believed that the Prosecutor and the Deputy Prosecutors should come from different legal systems and not simply be of different nationalities.

13. His delegation also had reservations on article 45, paragraph 4, allowing use of the expertise of gratis personnel offered by States parties, intergovernmental organizations or non-governmental organizations. Lebanon opposed the acceptance of such offers by the Prosecutor, believing that it would be a violation of the principle of independence of staff.

14. **Mr. AL-THANI** (Qatar), **Mr. KERMA** (Algeria), **Mr. MATRI** (Libyan Arab Jamahiriya), **Ms. MEKHEMAR** (Egypt), **Mr. Khalid Bin Ali Abdullah AL-KHALIFA** (Bahrain) and **Mr. AL SHEIKH** (Saudi Arabia) said their delegations likewise had reservations on article 43, paragraph 2, and article 45, paragraph 4.

15. **Mr. TOMKA** (Slovakia) thought that it would be important for article 41, paragraph 3, to be compatible with article 36. All judges serving on a full-time basis should be treated equally.

16. **Mr. MAGALLONA** (Philippines) noted that, under article 36, paragraph 1, all judges would be elected as full-time members of the Court. The requirement not to engage in any occupation of a professional nature should apply to all judges.

17. **Mr. YEE** (Singapore), referring to article 40, paragraph 1, said it was extremely important that members of the Trial Chamber and the Pre-Trial Chamber should have criminal trial experience.

18. **Ms. CLAVERIE DE SCIOLLI** (Guatemala), referring to article 43, paragraph 9, thought that there should be a reference to the definition of the term "gender" to be included in Part 2.

19. *Ms. Fernández de Gurmendi (Argentina), Vice-Chairman, took the Chair.*

20. **Mr. CHUKRI** (Syrian Arab Republic), **Mr. Sayyid Said Hilal AL-BUSAIDY** (Oman), **Mr. BAIGZADEH** (Islamic Republic of Iran) and **Mr. ABDELKADER MAHMUD** (Iraq) expressed reservations on article 43, paragraph 2, and article 45, paragraph 4.

21. **Mr. AL-THANI** (Qatar) said that his country had reservations on the last subparagraph in article 41.

22. **Mr. SKELEMANI** (Botswana) said that he had difficulty with the proposed text for article 41, paragraph 3.

23. Referring to article 46, paragraph 2 (b), he expressed the view that the term "absolute majority" required clarification.

24. **Mr. MATSUDA** (Japan) thought that the reference to the Rules of Procedure and Evidence in article 49 should be replaced by a reference to the agreement on privileges and immunities which was to be drafted by the Preparatory Commission after the adoption of the Statute.

25. **Mr. BASSIOUNI** (Egypt), Chairman of the Drafting Committee, agreed with that suggestion.

26. Referring to the questions raised regarding article 41, paragraph 3, he pointed out that, as decided by the Committee of the Whole, article 36 would provide for all judges to be elected as full-time members of the Court but for some of them not to be required to work on a full-time basis.

27. **Mr. CHIMIMBA** (Malawi), referring to article 49, asked whether the Chairman of the Drafting Committee thought that the reference to the agreement on privileges and immunities should also be included in the paragraph dealing with the treatment of counsel, experts and others.

28. **Mr. BASSIOUNI** (Egypt), Chairman of the Drafting Committee, replied in the affirmative.

29. **Mr. YAÑEZ-BARNUEVO** (Spain) thought that article 41, paragraph 3, should perhaps refer to a "remunerated occupation". The purpose was presumably to preserve the independence of judges by excluding the possibility of their receiving payment from a State or an institution.

30. **Mr. TOMKA** (Slovakia) felt that further thought was needed on the proposed provisions concerning the conditions of service of judges. One option might be to have article 36, paragraph 1, say that all judges were to be "available to serve full-time from the commencement of their terms of office". There was no need to speak in article 36 of judges being available "at the seat of the Court".

31. **Mr. RWELAMIRA** (South Africa), Coordinator for Part 4, said that the concern had been not to cause unnecessary expense for the Court by requiring all judges to be present permanently at the seat of the Court. It had also been felt that judges who were not required to be at the seat of the Court should be free to engage in other professional occupations, or should be eligible for some kind of allowance under article 50.

32. **Mr. VERGNE SABOIA** (Brazil) said his understanding was that paragraphs 1 and 2 of article 41 applied to all judges, whereas paragraph 3 applied to judges who were not required to be permanently at the seat of the Court, and who would be allowed, always subject to the provisions of paragraphs 1 and 2, to engage in some other activity.

33. After some further discussion in which **Mr. BELLO** (Nigeria), **Mr. TOMKA** (Slovakia) and **Ms. WILMSHURST** (United Kingdom) took part, **the CHAIRMAN** said that, if she heard no objection, she would take it that the Committee of the Whole wished to adopt Part 4 with the changes in article 49 suggested by the Chairman of the Drafting Committee and on the understanding that further thought would be given to the drafting of articles 36 and 41.

34. *It was so decided.*

35. *Mr. P. Kirsch (Canada) resumed the Chair.*

36. **Mr. BASSIOUNI** (Egypt), Chairman of the Drafting Committee, introduced document A/CONF.183/C.1/L.66 on Part 11 of the draft Statute, consisting of article 102. Paragraph 2 (f) was still pending, but he suggested that the Committee of the Whole should adopt Part 11 subject to review of paragraph 2 (f) at a later time.

37. *It was so decided.*

The meeting rose at 7.55 p.m.